# Central Law Journal.

ST. LOUIS, MO., JULY 16, 1915.


## THE CONTRACT OF MEMBERS IN A MUTUAL ASSOCIATION FOR INSURANCE.

We discussed in 70 Cent. L. J. 273, the "Right of Fraternal Insurance Societies to Change Their Rates," and in 72 Cent. L. J. 19, "The Right of a Fraternal Benefit Association to Rerate Its Members—a Law of Necessity."

In the former of these discussions we contended for the proposition that "A fraternal insurance association seems to be nothing more, under organizing statutes, than an aggregation of men each agreeing to bear at all times his proportionate burden in the carrying of indemnity on their respective lives."

In the latter of these discussions we took the position that: "No legislature ever intended, or in the rightful exercise of legislation could intend, that any corporation it creates, directly or mediately, should have implanted in its charter the seeds of its destruction," and that denying "to fraternal benefit associations the right to readjust their rates whenever necessary to equalize burdens among members" was the planting of such seeds of destruction.

Courts of different states have disagreed as to the right of fraternal associations to change their rates on the theory that the contract was or not one with an organization in corporate form and with full power to conclude agreements for a valuable consideration and be bound thereby, notwithstanding it was not in any business of a gainful nature.

We may admit that such organizations have the power to enter into binding contracts with third persons or with their own members, so far as pertains to its running expenses are concerned, but with their members so far as the principal object of their existence is concerned, we have steadfastly denied. We have further denied that there could be any vested right in any agreement so far as the cost of insurance was concerned, when back of such agreement lies the principle of equality of burden among all of the members.

This principle may seem departed from, when a fraternal association levies an additional sum for a sinking fund. But as its representative assemblies or legislatures must prescribe this additional sum and it is designed simply to give stability to the principal purpose this is only a seeming and not a real departure from principle.

We are greatly pleased with a very elaborate unanimous opinion by Washington Supreme Court, sustaining the positions above set forth, and we allude to it at this time as in season with suggestions for uniform law on an important subject. The variance in state decision we believe has seriously hampered success and progress in a form of insurance, popular not only as protection for surviving dependents of breadwinners, but also for its excellent social characteristics.

These latter advantages often have been grossly abused in organizing lodges, councils, tents and other such subordinate aggregations where there was no need and the purpose was to give promoters offices and salaries. An unhealthy growth in this way brings into disrepute meritorious associations which supply a distinct need in insurance and in loyal association, and uniform law ought to throw around them its safeguards and promote their building on sure foundations.

The Washington court in reversing the trial court's ruling that a fraternal association could not raise the rate mentioned in a benefit certificate, considered a provision of the by-laws that: "He (the member) shall pay the same rate of assessment

thereafter so long as he remains continually in good standing in the order." Thomas v. Knights of Maccabees of the World, 149 Pac. 7.

It was contended that this provision in the general law of the society entered into and became a part of the contract and cases were cited to sustain this contention, especially many New York cases. These cases were said by the Washington court to go upon the theory that "the society and members are contracting parties" and assume a certain burden in performance of specified conditions, namely, fixed payments.

The Washington court, referring to opposing cases, summarizes them as follows: "There being no contract in the commercial sense, but a mutual promise of every member to pay the certificate of every other member, there can be no vested right in any provision of the contract, either express or implied, that is not subject to and controlled by the duty of the member to pay the cost of his own insurance, for under no construction of a mutual contract can he demand more than he is willing to give."

Putting this still more forcibly, the court says: "He (the member) cannot throw his brothers overboard under the guise of contract and vested right. He must share his life-belt with all. If it is not strong enough to sustain him, he is in duty bound to sink to the same level with them; for whatever the words of his contract may imply, it is to be measured by the object of the society, which he has bound himself to support."

In other words, the mutuality, which is the basis of all these contracts, will not countenance any torpedoing, by a passenger, of the craft which is carrving him over a troublous sea, under any claim of vested right. He gives up his vested rights when these may interfere with his duty to fellow passengers and crew and he subordinates everything to the cardinal principle of equal burden in membership.

## NOTES OF IMPORTANT DECISIONS.

**NEGLIGENCE—INTERVENING ACTS AS PROXIMATE CAUSE OF INJURY.—It would seem from an opinion handed down in Washington Supreme Court that not only are children to be deemed irresponsible as to the handling of dangerous agencies left carelessly exposed, but also that grown people may be deemed in like category, where their dangerous properties are not known. Matthis v. Granger Brick & Tile Co., 149 Pac. 3.**

**The facts in this case show that two boys went upon defendant's premises where they found dynamite caps insecurely guarded, that is, they were in a clay pit covered by a wooden door, which was not locked. One of the boys put one of the caps in the pocket of his overalls, where it was found by his mother in removing trinkets from the pockets. She noticed the cap because "it was bright and new and something out of the ordinary," but did not dream it was a dynamite cap. She placed it with the other things on a desk, where her son found it. In his attempting to pick it with a hairpin, it exploded and caused injury.**

**Here seem a number of intervening things, none of which was held by the court to interrupt the chain of causation, as matter of law, from the original act, also held to present to the jury the question of defendant's negligence.**

**It is to be noticed that the boys were not on the premises by any allurement, but that they opened an unlocked door and without leave or license carried away some of the things they found under the door. The "turntable doctrine" hardly seems inclusive of this kind of a case, and this eleven-year-old schoolboy ought to have known he had no right to carry away any of the things he found. Shall a keeper of dangerous agencies provide against trespass and unlawful appropriation? Guarding dangerous agencies would not seem to cover, in anticipation, these things.**

**But, if we get past this point, shall we say that the grown person, into whose hands the cap came, is not an independent intervening agent and her igorance of the cap's character and her careless act in regard to it is to be anticipated?**

**When we consider that the lure rule as to children finds no room for application in this case, we cannot understand why it should be thought there was any actionable duty by the defendant in regard to trespassers and unlawful appropriators, be they infants or adults, nor**

that ignorance of the qualities of a thing "out of the ordinary" by a grown person should be anticipated to lead to the consequences in this case. It appears to us that the court erred in reversing the judgment of non-suit.

---

CONSTITUTIONAL LAW—DISCIPLINARY REGULATIONS IMPOSED BY LEGISLATURE ON CONDUCT OF STUDENTS IN PUBLIC SCHOOLS.—In Waugh v. Board of Trustees, 35 Sup. Ct. 720, the constitutionality of a statute forbidding students at institutions, supported in whole or in part by public funds, belonging to secret orders, etc., among the students on pain of not being allowed to compete for class honors, diplomas or distinctions, is upheld so far as the Fourteenth Amendment is concerned. See also Board of Trustees v. Waugh, 77 Cent. L. J. 219, where constitutionality so far as state constitution is concerned was upheld.

Mr. Justice McKenna adopts the state view of the right of the legislature to impose "disciplinary regulations" on students attending schools supported by public money, and it regards the statute as of this character.

So far as this statute is claimed to interfere with "the equal protection of the law and the harmless pursuit of happiness," or its depriving a student "of property and property rights without due process of law, and of the privileges and immunities of citizens of the United States," the following short answer is made: "It is very trite to say that the right to pursue happiness and exercise rights and liberty are subject in some degree to the limitations of the law and the condition upon which the State of Mississippi offers the complainant free instruction at its university, that while a student there he renounce affiliation with a society which the state considers inimical to discipline, finds no prohibition in the Fourteenth Amendment."

We do not greatly like this short answer, because it goes upon the theory that the state offers "free instruction," when essentially the money that the state uses is not its own, but is trust money raised by taxation and as to which the student and others are cestuis que trustent. A trustee cannot impose conditions in opposition to the purposes of a trust. But there seems room for validity of the statute in disciplinary regulation in the management of this trust fund. Students, however, ought not to be regarded as receiving benefits for which they have paid nothing. They may get more than their pro rata in the instruction they receive, but the offer is made to all, and public policy upholds the tax therefor.

---

COMMERCE—THE COMMODITIES CLAUSE OF THE HEPBURN ACT.—The Supreme Court has declared that the contract between the Delaware, Lackawanna & Western Railroad Company and the Delaware, Lackawanna & Western Coal Company is invalid as forbidden by the commodity clause of the Hepburn act, but what the decision amounts to further than that the contract was not drawn with sufficient skill to avoid such repugnance, we confess ourselves unable to discern. United States v. Delaware, L. & W. R. Co., 35 Sup. Ct. —.

If it is a fact that the same and no other stockholders are in the two companies, and this fact does not prevent the two entities from dealing with each other as if this were not the case, there really is no need of keeping books at all as to their transactions or weighing any coal or keeping account of any shipments, except when one of the companies turns the coal over to some third person.

Mr. Justice Lamar goes to great pains to show that the coal company by the terms of the contract is restrained by the railroad company as to its output and the latter is bound to nothing as to whom it shall sell its coal at the mouth of the mine. But why blink the ultimate fact, that no matter what rights the coal company might be given or in what it might be restrained by that contract, it would never enforce the former or be troubled by the latter, if it was not for the interest of the railroad company that those should be enforced or these complained about?

The learned justice speaks of the contract making the alleged buyer "a puppet subject to the control of the railroad company," but we think no contract did this, but the stockholders' interest made a situation where it could not be otherwise than "a puppet," however free the terms of the contract may have been. The justice merely indulges in first-class analysis of a faulty contract and to this extent it is a criticism of learned counsel who were perfectly free to write up any contract that might weather any gales that should blow from the commodity clause.

The decision is really a victory for the railroad, because by every fair implication the opinion says the two alleged companies may contract about the coal and its carriage by the railroad company. This is virtually all they wanted to know.

## BLIND TRUSTS IN CONVEYANCES.

All trusts are more or less blind. That is, they are blind in the sense that confidence is blind, or love is blind; but the particular point to which I call your attention is, What is the effect of a conveyance where the name of the grantee is followed by the word "trustee" or the words "as trustee?"

I will divide this subject into three heads: (1) Is the use of the word "trustee" or the words "as trustee" notice to the world that the grantee is not the owner of the property conveyed in the deed? (2) Can parol testimony be introduced to explain or show who the real owner is when the name of the grantee is followed by the single word "trustee?"[3] Is there any difference between the use of the single word "trustee" and the words "as trustee" following the name of the grantee in the conveyance?

*Is the use of the word "trustee" or the words "as trustee" notice to the world that the grantee is not the owner of the property conveyed in the deed?*

In the case of Steunfels, et al. v. Watson,[1] it is said: "The word 'trustee' following the name of the grantee in a deed is notice that he is not the owner of the property."[2] Judge Hart, in a separate opinion in the case of Foster v. Treadway,[3] said: "The word 'trustee,' as used in the deed, means something different from the word 'owner,' and parol evidence may be introduced to explain it." While the words just quoted constitute his entire opinion and he cites no authorities or decisions sustaining his holding, the recitations in the deed which he had under consideration were as follows: "To Elizabeth Heflin, Trustee." The deed was in the ordinary form of a warranty deed, with the exception that the word "trustee" appeared after the name of the grantee wherever it appeared in the several clauses of the deed.

Under the well known rule that parol evidence is not admissible to vary the terms of a written contract, the effect of the opinion just quoted is that the use of the word "trustee" puts the purchaser from the grantee on notice, because otherwise there would be no reason for the introduction of parol testimony. One could not be an innocent purchaser of land conveyed under such an instrument, and at the same time have his title destroyed by the introduction of parol testimoney showing that the grantee had no right to convey.

There seems to have arisen in some states the idea that one could convey his real estate to any person and follow the name of the grantee with any words that the grantee might choose, and that that person, or the grantee in that instrument, could pass the title on to another by using his own name and the words following his name in the conveyance to him. And this idea found judicial expression in the case of Auten v. City Electric Street Railway Co.,[4] in which the court used the following language, and he cites 134 N. Y. 435, and 92 Ga. 260, to support his decisions: "The general rule is that where in a deed the word 'trustee' is added to the name of the grantee, but there is no declaration of the trust, the word 'trustee' may be regarded as *descriptio personae.*"

I have already called attention to some cases holding the opposite, and will now proceed to analyze these cases briefly.

In the case of Union Pac. R. R. Co. v. Durant,[5] *supra,* Justice Swayne, speaking for the court, said: "The designation alone was sufficient to devolve the duty of inquiry upon any third person dealing with the property."[6]

(1) 139 Fed. Rep. 505.

(2) The same doctrine appears to be held in the case of Union Pac. Ry. Co. v. Durant, 95 U. S. 579; 24 L. Ed. 391; First Nat'l Bank v. National Broadway Bank, 42 L. R. A. 139; Geyser Gold Mining Co. v. Stark, 53 L. R. A. 684.

(3) 98 Ark. 455.

(4) 104 Fed. 398.

(5) 95 N. S. 579.

(6) The court cited Duncan v. Jaudon, 15 Wall. 165, 21 L. Ed. 142; Shaw v. Spencer, 100 Mass. 382; Sharp v. Taylor, 2 Phil. 801; McBlair v. Gibbs. 17 How. 232, 15 L. Ed. 132; Brooks v. Martin, 2 Wall. 70, 17 L. Ed. 732.

In the case of Shaw v. Spencer,[7] it is said: "The term 'trustee' in stock certificates issued to holder in his name 'as trustee' is sufficient to put persons on inquiry as to the holder's right to pledge them for his own debt, and a pledgee taking them without inquiry does so at his peril."

The Spencer case was one where a third party, and also a purchaser, was interested. It is true that the case was dealing with personal property, but I am unable to see any difference between personal property and real property in this regard. This case going further, says: "Evidence of usage among brokers to buy and sell, in the market and without inquiry, stock certificates in the name of one as trustee, and by him transferred in blank, is not admissible to vary the established rule of law that the word 'trustee' in such certificate is sufficient to put the purchaser on inquiry, and that he takes it at his peril."

I am of opinion—and I think I am borne out by the authorities—that the use of the word "trustee" after the name of the grantee in a conveyance puts the purchaser for value on inquiry; and if the purchaser takes the property without making such inquiry as ordinarily prudent men would make under the circumstances, he is liable to lose his title. In fact, the rule seems to be that a purchaser buying from a grantee whose name is followed in the previous instrument by the word "trustee" takes subject to the same trusts, incumbrances and handicaps as were imposed upon the grantee whose name was followed by the word "trustee."

In the case of Johnson v. Calnan,[8] it is said: "The word 'trustee' inserted after the name of the grantee in the deed executed by plaintiffs, and also affixed by defendant to his signature to the receipt, would seem to indicate something more than a mere *descriptio personae;* as a description of the person, the word thus used is too general to amount to anything; as a description it does not identify any one. In our opinion the word 'trustee,' under the circumstances, indicates the intention of the parties that the grantee was to take the title, not in his individual capacity, but in trust for another, though the name of his *cestui que trust* is not disclosed by the deed."

The language of the deed in the Johnson case was as follows: "This deed, made this sixth day of January, in the year of our Lord one thousand eight hundred and eighty-seven, between John Calnan, Johanna Calnan, Benjamin B. Hill, and Charles H. Leonard, all of the county of Garfield and state of Colorado, of the first part, and Wm. E. Johnson, trustee, of the county of Garfield and state of Colorado, of the second part," etc. Then follows the consideration and description of the property.[9]

In the case of Mercantile National Bank v. Parsons,[10] it is held: "While the fact that a grantee in a deed is described as 'trustee' is notice to one who takes title under the deed that the property is or may be held under a trust of some description and puts him on inquiry as to the existence and nature of the trust, yet all that is required of a party who is put upon inquiry is good faith and reasonable care in following up the inquiry which the notice given him suggests."

The Parsons' case arose between an innocent purchaser and one claiming to be the beneficiary under a deed conveying the land to Crowell, trustee, the court saying that the fact that Crowell was designated "trustee" in the deed, without naming the beneficiary, or stating the nature of the trust, was, of course, insufficient to create any trust; but held that it was sufficient to give notice and demanded an inquiry.

In the Third edition of "Devlin on Deeds,"[11] it is said: "The gen-

(7) 100 Mass. 382.
(8) 41 American State Reports, 228.

(9) This case was followed in the cases of Marbury v. Ehlen, 72 Md. 206; 20 Am. St. Rep. 467, and note; Alger v. North End Savings Bank, 146 Mass. 418; 4 Am. St. Rep. 331.
(10) 54 Minn. 56; 40 Am. St. Rep. 299.
(11) Vol. 2, Sec. 738a.

eral rule that pervades the whole doctrine of notice is that, whenever sufficient facts exist to put a person of common prudence upon inquiry, he is charged with constructive notice of everything to which that inquiry, if prosecuted with proper diligence, would have led. Therefore, if a deed is made to a person designated 'trustee,' although the nature of the trust, or the beneficiary under it, is not disclosed, still a purchaser is obligated to inquire as to the nature and limitations of the trust."[12]

In the case of Snyder v. Collier,[13] it is said: "The word 'trustee' following the name of the grantee in a deed, is sufficient to put those dealing with him concerning the property on inquiry as to the existence and nature of the trust." And it was said in William, etc., Co. v. King:[14] "So as a general rule a person will be bound by recitals in the conveyance to him or in the chain of title."

Quoting further "Devlin on Deeds,[15] the learned author says: "In a case in Massachusetts, where stock issued to a person described as 'trustee,' had been pledged to secure his own debt, the court held that, unless this term should be regarded as a mere *descriptio personae,* and rejected as a nullity, there was notice of the existence of a trust of some kind. It held, however, that this term showed that the holder was a trustee for someone whose name was not disclosed, and that in legal effect, it was the same as if the beneficiary had been named, as all persons were charged with notice of the existence of a trust of some description."[16]

Now, if the use of the word "trustee" following the name of the grantee puts everyone on notice, it subjects him to the further rule that he takes the property subject to the incumbrances of his grantor who held in trust, or perhaps held in trust, and, therefore, there would be no bar created by the statute of limitations, because the purchaser from one designated as *trustee* would merely keep the trust left for the benefit of the *cestui que trust.*

It appears from the authorities cited that there is little doubt, if any, about the effect of the word "trustee" following the name of the grantee. It seems clear that the word "trustee" is sufficient to give notice to every one called upon to examine the title, as it has been designated by some authorities as a red light and danger signal, and any one who overlooks or passes by such signal, be it attorney examining the abstract of title, or the purchaser, does so at his peril.

There may be some conflict of authority on the point, but I have been unable to find any direct conflict. It seems that most of the authorities follow the case of Shaw v. Spencer, *supra,* which holds that the use of the word "trustee" without designating for whom the trustee holds is equivalent to saying trustee for a designated beneficiary. The illustration given in the case is as follows: "It would hardly be controverted in a case where the stock was held by 'A B, trustee for C D.' But the effect of the word 'trustee' alone is the same. It means trustee for some one whose name is not disclosed."

It would, therefore, appear that if the abstract of title shows that the property was

(12) The author cites many cases, and in a note quotes the following from an opinion of Judge Mitchell in the case of Mercantile Nat. Bank v. Parsons, supra: "It is a familiar doctrine that a purchaser is chargeable with notice of facts recited in deeds under or through which he takes title; and, while the word 'trustee' in a deed gives no notice of the name of the beneficiary, or of the character of the trust, yet it does give notice of a trust of some description, which imposes the duty of inquiry as to its character and limitations; and whatever is sufficient to put a person of ordinary prudence upon inquiry is constructive notice of everything to which that inquiry would presumably have led."

(13) 85 Neb. 552, 123 N. W. 1023.

(14) Tex. Civ. App., 122 S. W. 581.

(15) Sec. 738a.

(16) To get a better idea of what the purchaser gets who purchases from one designated "trustee," I quote part of Sec. 738, of Devlin on Deeds, Vol. 2, page 1363: "If a person has notice of a trust and purchases the trust property from the trustee, he will hold the property thus acquired subject to the same trust as that under which the trustee that held it."

at one time conveyed to John Doe, *trustee*, this would be notice to every one taking the title thereafter that John Doe was not the real owner of the property; and whoever takes the property assuming that he is the owner, stands a chance of losing it by the real owner being disclosed; and an attorney who gives an opinion that the title is good, where at any point in the abstract of title the word "trustee" follows the name of the grantee, does so at his peril. This would appear to be particularly so in any state where the statute provides that the real party in interest may bring suit.

In the case of Murray v. Ballou,[17] it is said: "If a purchaser has notice of the trust, at the time of purchase, he himself becomes a trustee, notwithstanding the consideration he has paid." "A purchaser of land buys at his peril, and is bound to look to the title and to the competency of the vendor."

Under this principle it is clear that the statute of limitations would be no bar. It would not matter how long the purchaser held the title or possession, the beneficiary could come in and assert his rights.[18]

*Can parol testimony be introduced to explain or show who the real owner is when the name of the grantee is followed by the single word "trustee?"*

It seems clear from what has been said that parol testimony may be introduced to show who the real beneficiary is if the name of the grantee in the conveyance is followed by the single word "trustee," as well as when it is followed by the words "as trustee." This was directly decided in the separate opinion of Judge Hart in the case of Foster v. Treadway,[19] and the following language was used in the case of Union Pac. R. R. Co. v. Durant:[20] "All the deeds but one designate the appellee as 'trustee,' without setting forth for whom or for what purpose. Parol evidence was admissible to show these things."

This is stated in almost the same language in the case of Johnson v. Calnan,[21] which case also quotes from the Durant case.[22] Some of the cases state it in the form that it puts the purchaser on inquiry, and a few of them say that parol testimony is admissible to show the true state of the title; and all the cases that hold that the use of the word "trustee" or the words "as trustee" is notice and requires inquiry, necessarily hold in effect that parol testimony may be introduced to show the true condition of the title and for whom the trustee holds in reality.

We are, therefore, confronted with the following conditions: If the name of the grantee is followed by the word "trustee" or the words "as trustee," this puts the purchaser from such grantee on notice that the grantee in the former instrument and the grantor in the present instrument is not the real owner. That is, he does not hold in his individual capacity, but for the benefit of some undisclosed beneficiary and the right to introduce parol testimony to show who the real beneficiary is places the burden and risk upon the purchaser of the land under such title to show that the grantee was either trustee for himself or that he was trustee with the power to sell and make disposition of the property, and that he has properly accounted for the funds and has paid them over to the proper beneficiary, with the knowledge to the beneficiary that the funds paid to him were received from the sale of the very land for which the trustee was so designated and empowered.

In other words, a lawyer who passes a title where the word "trustee" or the words "as trustee" appear takes the risk of the incapacity of infants, insane persons and married women, and the purchaser takes the

(17) 1 Johns. Ch. 556.

(18) "Cestui que trust are not entitled to the land and also to the purchase money. The two claims are inconsistent." Murray v. Lylburn, 2 Johns. Ch. 422. "They may follow the trust property into the hands of the purchaser, or may resort to the purchase money as a substitute fund." Haughwout v. Murphy, 22 N. J. Eq. 547.

(19) Supra.

(20) Supra.

(21) Supra.

(22) Supra.

same risk. In fact, the attorney and purchaser take the risk of all exceptions to the doctrine of estoppel and statute of limitations; and, while it might be true that one *sui juris* who had received the money from the trustee claiming the land would be estopped, the burden would still be on the purchaser, or the attorney, to show that at the time the beneficiary received the money the beneficiary knew that it was money coming from the estate, and the beneficiary must have the capacity to be estopped.

Thus, a trust company might deal as trustee for a beneficiary who had many pieces of property, and the beneficiary might not know from what particular fund or what particular sale certain money came, and the property might double in value, or increase in value many times, and the real beneficiary, although *sui juris*, would have a right, within reasonable time after he found out from what source the money had come, to repudiate the sale, return the money with the legal rate of interest, and recover the property. And, admitting that parol evidence is admissible to show who the real beneficiary is, the purchaser is never able to tell what kind of title he may have, because it cannot rest upon the security of the record, but must rest upon the inclination of the witnesses to swear to their interests and upon the memory of those called upon to testify, perhaps after the lapse of half a century, because we have found that one who buys subject to a trust becomes a trustee himself and holds the property for the benefit of the original beneficiary.

While it is true that under the registry laws the purchaser should not be required to look beyond the register of deeds further than is absolutely necessary, the use of the word "trustee" after the name of the grantee puts him on inquiry and subjects him to the risk and burden of establishing his title by parol evidence. If nothing appears sufficient to give the purchaser notice, he is completely protected by his record title, because if he buys without notice for valuable consideration he is a bona fide purchaser, and a bona fide purchaser, as a general rule, means buying on a record or abstract which does not disclose defects upon their face and do not contain sufficient information to put the party upon inquiry which would lead to knowledge or information equivalent to notice.[23]

If a party buy land for a valuable consideration (which is one of the essentials of a bona fide purchaser),[24] then he must also buy without notice of any defects, either of the record, or adverse possession, or other knowledge.[25] And it has been held in this state that if the record shows a good title, the good-faith purchaser is protected; unless the party has such actual knowledge as will put him on notice, either by the recitals of the instrument itself, or statements of the recorder, or otherwise.[26]

Therefore, we generally say that a bona fide purchaser is protected by his record title and has a right to look to that, and if there are no defects upon its face and he has no knowledge, which amounts to notice under the law, outside of the record, he will be protected.

The point to which this argument is directed is, that the use of the word "trustee" following the name of the grantee in a deed is a defect appearing of record, and the purchaser can only hope to escape by showing that the grantee, whose name is followed by the word "trustee" or the words "as trustee," has the power and capacity to

(23) See Devlin on Deeds, Vol. 2, 738.

(24) Devlin on Deeds, Vol. I, Sec. 813.

(25) Devlin on Deeds, Vol. II, Secs. 707, 728, 740.

(26) "The principle of equity is well established that a purchaser of land is chargeable with notice, by implication, of every fact affecting the title which would be discovered by an examination of the deeds, or other muniments of title of his vendor, and of every fact as to which the purchaser, with reasonable prudence or diligence, ought to become acquainted. If there is sufficient contained in any deed or record, which a prudent purchaser ought to examine, to induce an inquiry in the mind of an intelligent person, he is chargeable with knowledge or notice of the facts so contained." Devlin on Deeds, Vol. II, Sec. 1000. Stidham v. Matthews, 29 Ark. 650.

convey, or was in fact the real owner, or that the title passed by estoppel and not by conveyance.

*Is there any difference between the use of the single word "trustee" and the words "as trustee" following the name of the grantee in the conveyance?*

It has been suggested that the words "as trustee" require no explanation and do not require the introduction of parol testimony to show that the grantee is not the owner, but holds for the benefit of some one else; but from the authorities heretofore cited it is clear that there is no practical difference. The real question in both instances is whether or not the party assuming to convey the property was in fact the owner, because if the word "trustee" alone appears and the purchaser must make inquiry as to what it means, then, if the words "as trustee" appear, all he could be required to do would be to find out what they mean.

Some laymen and trust company officers not long ago concluded that they could avoid the effect of a blind trust—that is, the use of the word "trustee" after the name of the grantee—by an instrument granting to them, "as trustee," or "trustee," with special power in the instrument authorizing such trust company to convey. In other words, a grant to the Southern Trust Company, or the Union Trust Company, trustee, or "as trustee," for the benefit of A, B and C with power to convey. This, of course, got around the trouble of the blind trust, but often got the grantees into worse trouble where by statute it is provided that a married woman can convey her dower only in the manner prescribed by the statute.[27]

(27) Sec. 741, Kirby's Arkansas Digest provides: "A married woman may relinquish her dower in any of the real estate of her husband by joining with him in a deed of conveyance thereof, and acknowledging the same in the manner hereinafter prescribed." The Arkansas Supreme Court has held in many cases that the statutory method for releasing dower by a married woman is exclusive of all others. Pillow v. Wade, 31 Ark. 678; Countz v. Marking, 30 Ark. 17; Bowers v. Hutchinson, 67 Ark. 15; and other cases.

This means that a married woman cannot convey her dower by power of attorney, and it is well settled that she has dower in the equitable, as well as the legal, estates. So, if A, B and C were married men and deed to a trust company with power to convey for their benefit, that would be attempting to convey the dower of a married woman by power of attorney, which, I feel sure, cannot be done under the laws of states having statutes similar to that quoted from the Arkansas statutes.

*Conclusion.*

In conclusion it might be well to suggest some remedies for the blind trusts in conveyances which we already have, and to suggest how puzzles and difficulties of like kind can be avoided in the future.

There have been a great many transfers made with the use of the word "trustee," or the words "as trustee," following the name of the grantee, and these instruments of conveyance have been placed of record, which will cloud the title of many pieces of real property for at least a generation, and perhaps for more than half a century.

As to those already in existence I would suggest that the prospective purchaser and his attorney, upon the discovery of the word "trustee" or the words "as trustee," following the name of the grantee in any of the links of the chain of title, make inquiry as to who the real beneficiary is; to take affidavits; and, if possible, obtain deeds from the real beneficiaries or their heirs. In fact, find out the real situation and the purpose of making the deed, and if diligent inquiry is made, all the information obtained that is possible under the circumstances, and no defect is disclosed, I believe that the courts would compel the beneficiary to lose before it would compel an otherwise good-faith purchaser for value to lose.

These transfers, perhaps, have been made for many reasons. Some for convenience; some for the sole purpose of fixing a conduit of title where there were many owners; some for the purpose of hiding their prop-

erty to defeat their creditors; and many through a mistaken idea of the law. And, on account of the very fact that some have been made for fraudulent purposes, it justifies the attorney, abstracter and purchaser in making inquiry into all of them with caution and energy. An act of the legislature, giving a short time for all beneficiaries to bring suit, and barring the claims and rights of all beneficiaries, or those claiming any right, title or interest under such instruments, within one year from the passage of the act, would do much to clear up the existing troubles, and, perhaps, would be the best solution of the trouble. As a recommendation for a future course,I would just use the short word "don't."

Little Rock, Ark.

J. H. CARMICHAEL.

## BILLS AND NOTES—THEFT BEFORE DELIVERY.

SCHAEFFER v. MARSH, et al.

Supreme Court, Appellate Term, First Department. May 13, 1915.

153 N. Y. Supp. 96.

Under Negotiable Instruments Law, § 35, providing that, where an instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him, is conclusively presumed, it was not a defense to a check in the hands of a bona fide holder for value that it was stolen from the maker after it was signed and in all respects completed, except as to delivery.

PENDLETON, J. The action was brought by the holder for value without notice of a certain check drawn by the maker to one Marsh, indorsed by the latter and negotiated with plaintiff. It appears by the evidence that after the making out of the check and its signature by defendant, and before delivery, it was stolen from him, and thereafter indorsed and negotiated by the payee. The court rendered judgment for defendants, and the question involved on this appeal is whether the above facts constitute a defense to this action.

When stolen from the maker, the check was in all respects completed, except as to delivery. There is no evidence of any negligence on defendant's part, which would estop him from alleging that the check never had any valid inception by delivery, and the question is therefore squarely presented as to whether, under the Negotiable Instruments Law, the above facts are a defense to the check in the hands of a bona fide holder for value. In Poess v. Twelfth Ward Bank, 43 Misc. Rep. 45, 86 N. Y. Supp. 857, it was held that a check drawn by a maker, certified by the bank, and indorsed by the maker in blank, stolen from the maker before delivery, was nevertheless valid in the hands of a bona fide holder. So in Greeser v. Sugarman, 37 Misc. Rep. 799, 76 N. Y. Supp. 922, a note made to the maker's order and indorsed, and afterwards stolen from him, was valid in the hands of a bona fide holder for value, under section 35 of the Negotiable Instruments Law. In Linick v. Nutting, 140 App. Div. 265, 125 N. Y. Supp. 93, decided in 1910, a blank check, stolen from the maker and afterwards filled in and negotiated, was held invalid in the hands of a holder for value without notice; that until completion and delivery it had no inception, and the maker could not be held liable, unless for such negligence as would estop him from setting up the nondelivery by him. While the reasoning of the opinion and the case cited with approval (Burson v. Huntington, 21 Mich. 415, 4 Am. Rep. 497), tended to the view that the same rule would apply to an instrument complete in form stolen from the maker before delivery, the decision itself was put on the ground that under section 34 of the Negotiable Instruments Law an incomplete instrument, which has not been delivered, is not a valid contract in the hands of any holder, and that section 35 must be read in connection with section 34, and, so read, its provisions as to the conclusive presumption of delivery do not apply in the case of an incomplete instrument, such as the one under consideration. The fair result of these cases is that, where the instrument is complete, except as to delivery, the nondelivery is not a defense as against a bona fide holder in due course for value.

Judgment reversed, with costs, and judgment rendered for plaintiff, with costs. All concur.

NOTE.—*Completed Note Undelivered Stolen and Coming to Hands of Innocent Purchaser.*—Is there any such distinction between a completed paper stolen before delivery and an incomplete paper stolen prior to its completion and delivery as should sustain the ruling in the instant case?

In Burson v. Huntington, 21 Mich. 415, Judge Christiancy said: "When a note payable to bearer, which has become operative by delivery,

has been lost or stolen from the owner, and has subsequently come into the hands of a *bona fide* holder for value, the latter may recover against the maker. * * * But where the note has never been delivered and therefore had no legal inception or existence as a note, the question is whether he is liable to pay at all, even to an innocent holder for value. * * * A note in the hands of the maker before delivery is not property. * * * It is in law but a blank piece of paper. Can the theft of this piece of paper create a valid contract on the part of the maker against his will, where none existed before?"

In Baxendale v. Bennett, L. R. 3 Q. B. Div. 525, the paper was incomplete and put in the hands of another with authority to fill it up. It was discovered by the latter that he would not need the paper and it was returned to the first party who had signed it as acceptor. It was stolen. The fact of theft giving title to an undelivered paper was the only question considered and it was held it could not for any purpose.

The Negotiable Instruments Act speaks of an incomplete instrument, which has not been delivered not being a valid contract in the hands of any holder. But this section says nothing about theft of a note in complete form before it has been delivered.

Another section speaks of conclusive presumption of a valid delivery, where it is held by a holder in due course. The purpose of this presumption is to make "all parties prior to him liable to him." This seems to refer to a note which has passed from the maker by delivery, and to cut off only questions between successive holders. It does not specifically refer to the kind of paper spoken of by Judge Christiancy, nor expressly exclude his reasoning. In other words, there is no manifest purpose in the terms of the Negotiable Instruments Law to create a contract where by old ruling none existed.

It has been held that theft of a non-negotiable note indorsed in blank, does not clothe the thief with indicia of title. Young v. Brewster, 62 Mo. App. 628.

In New York prior to Negotiable Instruments Act, it was held that theft of a note prior to its delivery, did not make it a valid paper by sale to a *bona fide purchaser*. Hall v. Wilson, 16 Barb. 548.

In Texas it has been held independently of Negotiable Instruments Law and before it was enacted, that a *bona fide* purchaser does acquire title through a thief, of an undelivered note, and text-book authority and Texas decisions are cited. Worsham v. State, 56 Tex. Cr. R. 253, 120 S. W. 439.

Daniel on Neg. Ins., Sec. 836, says that the signature is itself assurance of delivery. See also 1 Randolph on Com. Paper, Sec. 217; 3 ibid. Sec. 1893.

But whatever the rule, we fail to see that Negotiable Instruments Act treats the subject at all, and we think it difficult to overcome the reasoning, *supra*, of Judge Christiancy, especially in courts which refuse to recognize validity of notes given for an illegal consideration, in the hands of *bona fide* purchasers. C.

## JETSAM AND FLOTSAM.

### THE LAST CASE.

**When we shall near the Silent Land,**
**Reviewing life in all its phases,**
**And face to face with death shall stand,**
**To contemplate that worst of cases,**
**Then may we have no terrors fearful,**
**But meet it in a manner cheerful.**

**If truth has been our guiding star**
**And we have lived all wrong surmounting,**
**As honest members of the bar,**
**We shall not fear our last accounting,**
**Nor feel we're courting grim disaster**
**In adverse findings of our Master.**

**We'll leave a dear old world behind,**
**But when we've ceased our litigation**
**Our friends may consolation find**
**To feel we've gained a higher station,**
**Away from trouble and affliction,**
**In Heaven's fairer jurisdiction.**

**—Wm. D. Totten, in "Case and Comment."**

## ITEMS OF PROFESSIONAL INTEREST

### THE STORY OF THE SOUTH DAKOTA BAR ASSOCIATION.

**The South Dakota Bar Association was organized at Sioux Falls, South Dakota, on December 7th, 1897. Judge Bartlett Tripp, of Yankton, South Dakota, was chosen as its first president, under whose guiding hands the association made rapid progress. Judge Tripp was born in Maine and graduated from Albany Law School, where he was a classmate of President William McKinley. He located in Dakota Territory in 1869. He served most acceptably as Chief Justice of the Supreme Court of Dakota Territory; was minister of the United States to the court of Austria from 1893 to 1897, and was chairman of the Samoan High Joint Commission which settled the relations of the United States, England and Germany pertaining to those troubled islands.**

**The growth of the association at first was slow, but of later years it has had a rapid growth.**

**While the association is young compared with the bar associations of the other states, yet it has done effective work in advocating**

legal reforms. The Committee on Legal Reform has been very active in drafting and recommending suitable legislation of practice and procedure, also in advocating "The Uniform Sales Act," "The Uniform Transfer Stock Act," "The Uniform Bill of Lading Act," "The Uniform Negotiable Instrument Act," "The Uniform Warehouse Receipts Act," and a number of remedial acts. Perhaps the greatest activity of the state bar association was through its Committee on Legal Reform, which took place at the January, 1913, meeting, at which meeting the committee recommended thirty-one acts for proposed legislation. The legislature at its session enacted about 80 per cent of the proposed legislation. At the last meeting of the South Dakota Bar Association, considerable attention was given to legal ethics and in pointing out defects of the South Dakota statutes and recommending to the legislature the codification of the statutes of the state. One of the interesting facts connected with the history of the South Dakota Bar Association is that Hon. J. H. Voorhees was elected as the first secretary of the associaton; he has never missed a meeting of the association and is still its secretary. To his untiring efforts in the behalf of a better and larger association, much credit is due.

The following are the officers of the association for the present year: President, Frederick A. Warren, Flandreau, S. D.; Secretary, John H. Voorhees, Sioux Falls, S. D.; Treasurer, L. M. Simons, Belle Fourche, S. D.

Mr. Frederick A. Warren, the president of the association, is state's attorney and an active and prominent representative of the Flandreau bar. He was born at Green Bay, Wisconsin, on the 13th of August, 1877, a son of O. O. and Rasminnie Warren.

Mr. Warren received his academic education in Freemont College, and his legal training at the Nebraska State University. Immediately after his graduation he came to Flandreau, opened an office and entered upon the active practice of his profession. He has been successful from the start. In the fall of 1910 he was elected state's attorney on the Democratic ticket without opposition, even though this is a strong Republican locality. He made such an excellent record during his first term that he was re-elected in 1912.

After commencing the practice of law he became a member of the South Dakota Bar Association and worked faithfully in placing the association on a high plane and in recognition of his services the association unanimously elected him as its president in January, 1915. During his presidency of the bar association considerable has been accomplished in reformation of procedure and practice and in simplifying appellate procedure. In the year 1913 Mr. Warren was a candidate for United States Attorney.

The next meeting of the association will be held at Watertown, South Dakota, September 1st, 2nd and 3rd, 1915. A splendid program is being arranged and a full attendance is assured.

## BOOK REVIEWS.

### EWELL'S ESSENTIALS OF THE LAW, SECOND EDITION.

The first volume of the second edition of Ewell's Essentials of the Law appeared in 1882. This first edition appears to have been intended as an Abridgment of Blackstone's Commentaries so as to relieve the latter of obsolete and unimportant matter. The second edition stresses the idea that the work is "essentially an elementary treatise upon the common law," and the text has been supplemented with explanatory notes, citing reports and authors of more modern date.

The work appears very valuable in a student's series and is no doubt of great use in leading to an understanding of the application of common law principles to modern conditions.

The work is two volumes under one cover of law buckram and comes from the publishing house of Matthew Bender & Co., Albany, N. Y., 1915.

### GLENN'S CREDITORS' RIGHTS AND REMEDIES.

Prof. Garrard Glenn, one of the lecturers of the Law School of Columbia University, embodies, in a well conceived book for students in the law, the substance of a special course of lectures on the Rights and Remedies of Creditors Respecting their Debtor's Property, expressed in brief form as above.

The work does not purport to be exhaustive of any branch of the law. It is rather philosophical than technical or as a mere collection of rulings in cases. It is designed to aid in discussion of principles, and the cases cited and discussed are selected with discriminating care.

The text of the work is good in style, and cases are tested according to their reasonableness, or in the following of precedents. The order in which the subject is developed is

orderly and on the whole should be of much advantage to students and to practitioners into the reason of rules, both under statutes and the common law.

The work is in one volume, bound in law buckram, attractive in appearance, and comes from the publishing house of Little, Brown & Co., Boston, 1915.

## BOOKS RECEIVED.

The Rights and Remedies of Creditors Respecting Their Debtor's Property. By Garrard Glenn, of the New York Bar. Special lecturer in the Law School of Columbia University. Joint author of Elkus and Glenn, on "Secret Liens and Reputed Ownership." Price, $3.00. Boston. Little, Brown & Company. 1915. Review in this issue.

The American Digest annotated. Key Number Series, Vol. 19. Continuing without omission or duplication the Century edition of the American Digest, 1658 to 1896, and the Decennial edition, 1897 to 1906. A digest of all current decisions of all the American courts, as reported in the National Reporter System, the Official Reports and elsewhere, from June 1, 1914, to Nov. 30, 1914, and digested in the Monthly Advance Sheets for July, 1914, to and inclusing December, 1914 (Nos. 286-291). Prepared and edited by the Editorial Staff of the American Digest System. St. Paul. West Pub. Co., 1915. Price, $6.00. Review will follow.

Handbook of the Law of Real Property. By Wm. L. Burdick, A.B., A.M. (Wesleyan); Ph.D. (Grant); LL. B. (Yale). At one time student in Harvard Graduate School. Professor of Law in the University of Kansas. Author of Elements on Sales; Cases on Sales; New Trials and Appeals; Cases on Real Property, and contributor to Cyc., Standard Encyclopedia of Procedure, etc. Price, $3.75. St. Paul, Minn. West Pub. Co., 1914. Review will follow.

Handbook on the Law of Bills and Notes. By Charles P. Norton, lecturer on bills and notes in the Buffalo Law School. Fourth Edition, with an appendix containing the Negotiable Instruments Law, by Wm. Underhill Moore, Professor of Law, University of Wisconsin Law School; and Harold M. Wilkie, of the Milwaukee, Wisconsin Bar. Price, $3.75. St. Paul. West Pub. Co. 1914. Review will follow.

## HUMOR OF THE LAW

At a London police court an individual who had been affected by the Salvation Army was brought up, charged with being a lunatic wandering at large. The magistrate—a genial old gentleman—asked him if he had any friends.

"The Lord is my only friend," said the prisoner.

"Yes," said the magistrate; "but have you anybody who will become surety for you?"

"The Lord," said the prisoner again, "is my salvation. He will become surety for me."

"Yes; but you see," said the magistrate, hesitatingly, "I want the name and address of some friend of yours."

"Address?" shouted the prisoner; "why, the Lord is everywhere!"

"Well, you see," replied the magistrate, "for the purposes of bail we should require some more settled residence."—Argonaut.

"There are times," observes a member of the bar, "when a lawyer regrets the use of an illustration which a moment before has appeared especially felicitous.

"'The argument of my learned and brilliant brother,' said the counsel for the plaintiff in a suit for damages from a street car corporation in Boston, 'is like the snow now falling outside—it is scattered here, there, and everywhere.'

"'All I can say,' remarked the opposing counsel, when his opportunity came, 'is that I tnink the gentleman who likened my argument to the snow now falling outside may have neglected to observe one little point to which I flatter myself the similarity extends,—it has covered all the ground in a very short time.'"—Law Students' Helper.

The Supreme Court of the United States is absolutely and indisputably supreme when it comes to solemnity, dreariness and gloom. People do not laugh once a year in that funereal looking chamber. All you have to do is to set your foot inside of it in order to understand that the dispensing of justice is a heavy, ponderous and serious affair.

Not long ago, however, Justice Lurton made the lawyers, the auditors, and the other justices laugh right out loud.

A lawyer from the south was arguing a case concerning two secret fraternal lodges.

"May the court please," said the lawyer heatedly, "the opposing lodge not only got hold of our ritual and used it, but also got our insignia and regalia."

"Just a moment," interposed Justice Lurton. "Did they also get your goat?"—Popular Magazine.

## WEEKLY DIGEST

**Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.**

*Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.*



1. **Acknowledgment**—Married Woman.—Conveyances by a married woman to her husband, made without a privy examination, and where the probate officer did not file the certificate required by Revisal 1905, § 2107, are void, notwithstanding Pub. Laws 1911, c. 109.—Singleton v. Cherry, N. C., 84 S. E. 698.

2. **Adverse Possession**—Life Tenancy.—A life tenant, as a tenant by the curtesy, cannot hold adversely to the remaindermen; hence those succeeding him in possession cannot tack their adverse holding to the life tenant's holding.—Duggins v. Woodson, Va., 84 S. E. 652.

3. **Arson**—Burden of Proof.—Where nothing appears but the burning, the burden is on the state to overcome the presumption therefrom that the fire resulted from accident or providential cause.—Rice v. State, Ga., 84 S. E. 609.

4. **Attachment**—Claimant's Bond.—Claimant and his sureties, giving bond for possession of property attached, held liable on the bond for the amount of the note given for the price of the property attached.—Maser v. Brunn, Wash., 146 Pac. 1044.

5. **Bankruptcy**—Injunction.—Injunction will not be granted as of course on the filing of an involuntary bankruptcy petition, under Bankr. Act, § 11a, restraining proceedings under a judgment recovered against the bankrupt in the state court.—In re Penn Development Co., U. S. D. C., 220 Fed. 222.

6.——Jurisdiction.—Where a voluntary bankruptcy proceeding was instituted to relieve the bankrupt from a nondischargeable debt, the court had jurisdiction to dismiss it, instead of denying the bankrupt's application for a discharge.—In re Shepardson, U. S. D. C., 220 Fed. 186.

7.——Liens.—An order for the sale of a bankrupt's property properly provided that in case of a purchase by a lien creditor he could have credit on the price for such portion thereof as would otherwise accrue to him by reason of his lien.—Clark Hardware Co. v. Sauve, U. S. C. C. A., 220 Fed. 102.

8.——Liens.—The referee in bankruptcy held entitled to fees upon the total amount of the assets transferred to a new corporation, not upon the amount actually received at the sale of the assets subject to existing liens.—In re Breakwater Co., U. S. D. C., 220 Fed. 226.

9.——Liens.—Expenses of operating vessels of bankrupt shipowner by trustee after adjudication held not chargeable to proceeds of vessels as against holders of maritime liens, where there were general funds of the estate.—In re New England Transp. Co., U. S. D. C., 220 Fed. 203.

10.——Partnership.—Under Bankr. Act, § 5f, relative to individual and partnership estates, where partners the day preceding the adjudication withdrew partnership assets and applied them in payment of individual debts, held, that they could not be required to return such money.—Crawford v. Sternberg, U. S. C. C. A., 220 Fed. 73.

11.——Partnership.—Where a partnership and its members are adjudged bankrupt on a single petition, there is but one case for the purpose of computing the trustee's fees and commissions.—In re Rider, U. S. D. C., 220 Fed. 193.

12.——Practice.—Where the essential facts alleged in a bankruptcy petition were admitted, it was no answer to the creditors' right to an adjudication that after the petition was filed foreclosure on the bankrupt's property was begun, and that the value of the property was less than the lien.—Vulcan Sheet Metal Co. v. North Platte Valley Irr. Co., U. S. C. C. A., 220 Fed. 106.

13.——Wages.—Wages of a bankrupt earned after adjudication are not properly a part of the assets to be administered.—Progressive Building & Loan Co. v. Hall, U. S. C. C. A., 220 Fed. 45.

14. **Banks and Banking**—Deposit.—A negotiable instrument deposited in a bank indorsed for collection is the property of the depositor, and the fact that the bank gave him credit for the instrument regularly indorsed is not conclusive evidence of its purchase.—Franklin Nat. Bank v. Roberts Bros. Co., N. C., 84 S. E. 706.

15. **Bills and Notes**—Reimbursement.—A note for rent of a subsequent year, given by one who had purchased at foreclosure sale under an agreement with the mortgagor that he should have the use of the land for a year by way of reimbursement, held not without consideration.—Anders v. Sandlin, Ala., 67 So. 684.

16. **Brokers**—Compensation.—A broker who procures a purchaser ready, willing, and able to buy on the terms specified by the owner is entitled to a commission, though the contract of sale is never performed or never entered into.—Farrington v. McClellan, Cal., 146 Pac. 1051.

17. **Burglary**—Evidence.—Proof that accused sold a ham recently stolen from the smokehouse of the prosecuting witness makes out a prima facie case of burglary.—Hickey v. State, Ala., 67 So. 732.

18. **Carriers of Goods**—Bill of Lading.—Where a grain dealer procured from the carrier a bill of lading for a larger quantity of wheat than was shipped, and plaintiff purchased the wheat and took up the bill of lading, he could recover his consequential damages from the railway company and the grain dealer.—E. G. Rall Grain Co. v. Missouri Pac. Ry. Co., Kans., 146 Pac. 1180.

19.——Bill of Lading.—Where draft with bill of lading attached is transferred by consignor to one discounting draft, a special property passes to the transferee, which becomes absolute if consignee refuses to accept.—Hood v. Commercial Germania Trust & Savings Bank of New Orleans, Ala., 67 So. 721.

20.——Claim for Reparation.—Shipper, not a party to proceedings to have increase in freight rates declared unreasonable, may maintain reparation claim before the Commission or the courts, based on a finding that the increase was unreasonable.—A. J. Phillips Co. v. Grand Trunk Western Ry. Co., 35 Sup. Ct. Rep. 444.

21.——Transportation.—The cost of transportation, to be considered in determining whether intrastate rates for carriage of a certain commodity are confiscatory, includes all outlays which pertain to such transportation.—Northern Pac. Ry. Co. v. State of North Dakota ex rel. McCue, 35 Sup. Ct. Rep. 429.

22. **Clubs**—Intoxicating Liquor.—Where a "locker-club" having no valid charter contracts for intoxicating liquors, any of its members may be held liable therefor.—Shiflett v. John W. Kelly & Co., Ga., 84 S. E. 606.

23. **Commerce**—Interstate Business.—Agent of non-resident portrait manufacturer, to whom the latter ships portraits made to fill orders and frames for such portraits, cannot be required to take out a peddler's license, when putting the portraits into the frames and delivering them.—Davis v. Commonwealth of Virginia, 35 Sup. Ct. Rep. 479.

24.——Interstate Business.—Business carried on in Kansas by a liquor dealer maintaining warehouse on the Missouri side of the Missouri river, filling orders for liquors for Kansas customers by deliveries in his own wagon or by freight, held interstate business, though such dealer is a citizen of Kansas.—Kirmeyer v. State of Kansas, 35 Sup. Ct. Rep. 419.

25.——Shipment.—Where goods and live stock were shipped from a point in Oklahoma to a point in Kansas, and the destination was changed to another point in Kansas, the entire transaction was governed by the interstate commerce regulations permitting a carrier to limit its liability.—Kirby v. Union Pac. Ry. Co., Kan., 146 Pac. 1182.

26. **Conspiracy**—Merger.—A misdemeanor, which is the object of a conspiracy, is not merged in the latter offense, which is also a misdemeanor, nor is the offense of conspiracy merged in the consummated misdemeanor.—Steigman v. United States, U. S. C. C. A., 220 Fed. 63.

27. **Constitutional Law**—Ordinance.—An ordinance requiring that, before a private detective can carry on his business, he must disclose his identity to the police, make a public record of his employment, and work under police supervision, held not violative of Const. art. 1, § 1, par. 2.—Lehon v. City of Atlanta, Ga., 84 S. E. 608.

28. **Contracts**—Definition.—A "contract" is the thing upon which two or more people agree.—Southern Ry. Co. v. Huntsville Lumber Co., Ala., 67 So. 695.

29.——Estoppel.—Where defendant sent an old engine to plaintiffs for credit at such price as could be agreed on, held that, having rejected the offer made, he could not demand that they credit him with the value of the engine.—James Leffel & Co. v. Hall, N. C., 84 S. E. 695.

30. **Corporations**—Intoxicating Liquors.—A corporation chartered as a fraternal beneficiary association cannot so amend its constitution and by-laws as to change it into a "locker club" authorized to contract for intoxicating liquors for its members.—Shiflett v. John W. Kelly & Co., Ga., 84 S. E. 606.

31.——Mortgage.—A clause in a mortgage given by a public service corporation that it shall include after-acquired property is valid.—In re Frederica Water, Light & Power Co., Del., 93 Atl. 376.

32.——Notice.—Knowledge of an injury to a workman in the employ of a corporation, acquired by a foreman, also an employe, while not acting for the corporation, but for himself, does not charge the corporation with notice of the injury.—Frankfort Marine, Accident & Plate Glass Ins. Co. v. John B. Stevens & Co., U. S. C. C. A., 220 Fed. 77.

33.——Winding Up.—If business of a corporation is unprofitable or hopeless holders of majority of stock may against dissent of minority sell all its property to wind up its affairs.—Butler v. New Keystone Copper Co., Del., 93 Atl. 380.

34. **Covenants**—Description of Land.—Where a tract of land is particularly described by metes and bounds, the additional statement that it contains a particular number of acres will be considered as descriptive, and not as a covenant of quantity.—Moore v. Walsh, R. I., 93 Atl. 355.

35. **Criminal Law**—Misconduct of Attorney.—Where the prosecuting attorney stated in the jury's presence that a witness, according to his own testimony, had committed a crime, and demanded his arrest, and the court ordered his arrest and commitment, such action was an invasion of defendant's rights.—State v. Clark, Idaho, 146 Pac. 1107.

36. **Damages**—Breach of Contract.—That actual damages for breach of contract were less than stipulated damages does not make the stipulation a penalty unless the amount is exhorbitant, but the stipulated damages limit recovery though actual damages were greater.—Baltimore Bridge Co. v. United Railways & Electric Co. of Baltimore, Md., 92 Atl. 420.

37.——Instructions.—The giving of an instruction that "in some torts the entire injury is to the peace, happiness and feelings," and that no precise measure of damages can be prescribed,

without stating that such instruction was applicable only to damage based on pain and suffering, held error.—Lawrenceville Oil Mill v. Walton, Ga., 84 S. E. 584.

38.——Last Clear Chance.—Doctrine of last clear chance does not apply, unless defendant, after he discovered plaintiff's peril, or in the exercise of ordinary care ought to have discovered it, negligently failed to avoid the accident. —Norfolk Southern R. Co. v. White's Adm'x, Va., 84 S. E. 646.

39.——Profits.—Unless the profits of a business can be ascertained reasonably by calculation, their loss cannot be allowed as damages.—Yazoo & M. V. R. Co. v. Consumers' Ice & Power Co., Miss., 67 So. 657.

40.——Proximate Cause.—Where the only negligence submitted to the jury concerned the employer's failure to furnish a ladder road and bell signal in a mine shaft, damages not resulting from such failure were not recoverable. —Benson v. Jones & Laughlin Ore Co., Mich., 151 N. W. 707.

41.——Variance.—Proof that defendant was injured by his body coming in contact with a charged electric wire held not at fatal variance with an allegation that he was injured by the wire striking his foot.—Walters v. Appalachian Power Co., W. Va., 84 S. E. 617.

42. **Death**—Damages.—In action under Employers' Liability Act for death, evidence that one of the beneficiaries of the action collected insurance on the decedent's life held inadmissible in mitigation of damages.—Brabham v. Baltimore & O. R. Co., U. S. C. C. A., 220 Fed. 35.

43. **Deeds**—Burden of Proof.—Where there is a fiduciary relation between the grantor and grantee, arising out of the grantor's dependency on the grantee, the transaction is presumably void, and the burden of showing its fairness is on the grantee seeking to retain its benefits.—McKnatt v. McKnatt, Del., 93 Atl. 367.

44.——Condition Subsequent.—Grantees who obtained a conveyance in consideration of their agreement to support the grantor for life held liable for the grantor's maintenance after leaving the grantees, and that a claim therefor would be a lien on the property.—Marsac v. De Ford, Mich., 151 N. W. 582.

45.——Fraud.—A grantee, who as part of his fraudulent scheme induced a mentally incompetent grantor to make a deed to avoid the collection of third persons' demands, could not defeat a suit to set aside the deed because executed to defraud.—Crawley v. Glaze, Va., 84 S. E. 671.

46. **Divorce**—Estoppel.—A husband guilty of adultery may not obtain a divorce for his wife's desertion, though the statutory period of desertion elapsed before the crime.—Green v. Green, Md., 93 Atl. 400.

47. **Dower**—Inchoate Right.—A wife cannot convey to a stranger her inchoate right of dower in property of her living husband.—Hill v. Boland, Md., 93 Atl. 395.

48.——Second Wife.—Plaintiff, a second wife, who joined her husband in mortgaging his undivided half of a donation claim, held, on his death to have a dower interest in an undivided half of the half patented to the husband.—Wiley v. Whitney, Ore., 146 Pac. 1093.

49. **Electricity**—Negligence.—Where an electric company suffers a broken telephone wire not owned by it to fall across its electric wire on a highway and remain there for an unreasonable time, it is negligent.—Walters v. Appalachian Power Co., W. Va., 84 S. E. 617.

50. **Embezzlement**—Indictment.—Evidence that defendant received money in his capacity as executor held not to sustain an indictment charging embezzlement as an agent under Comp. Laws, § 11591.—People v. Day, Mich., 151 N. W. 640.

51.——Voluntary Association. — Individuals composing a voluntary association may jointly own personal property and jointly have an agent with respect thereto.—Peters v. State, Ala., 67 So. 723.

52. **Eminent Domain**—Injunction.—Equity has jurisdiction to enjoin the taking of private property for public use in disregard of Const. art. 3, § 40.—City of Baltimore v. Bregenzer, Md., 93 Atl. 425.

53. **Equity**—Clean Hands.—The maxim that he who comes into equity must come with clean hands applies to any unconscientious conduct connected with the controversy.—Anders v. Sandlin, Ala., 67 So. 684.

54.——Improvidence.—Equity intervenes to protect the weak and the aged against imposition by designing people, and even against manifest improvidence, though there is no actual fraud in the other party.—McKnatt v. McKnatt, Del., 93 Atl. 367.

55.——Multifariousness.—A bill to enjoin a corporation from disposing of its assets and praying for the cancellation of a conveyance of a homestead held not multifarious.—Antoszewski v. City Plumbing Co., Mich., 151 N. W. 635.

56. **Estoppel**—Evidence.—Plaintiff's failure for several years to object to defendant's use of the surface of plaintiff's ground as a dump for materials from a mine tunnel held inadmissible to raise an estoppel, in the absence of proof of knowledge that defendant was so using it.—Himrod v. Ft. Pitt Min. & Mill. Co., U. S. C. C. A., 220 Fed. 80.

57. **Evidence**—Admissibility.—In actions involving fraud and misrepresentation, evidence of statements and dealings between the fraudulent party and others, similar to those charged in suit are admissible as tending to show knowledge or fraudulent intent.—First Nat. Bank of Marcus v. Wise, Iowa, 151 N. W. 495.

58.——Admissibility.—Testimony as to expressions, acts, and manifestations of injured person not occurring in anticipation that persons in whose presence they occurred would be called as witnesses held competent.—Marshall v. Wabash R. Co., Mich., 151 N. W. 696.

59.——Admissibility.—A report of an indemnity insurance company, that an employer complied with the law and had no dangerous machinery, etc., held admissible against it, in an action by the employer on the policy.—Great Lakes Laundry Co. v. Aetna Life Ins. Co., Mich., 151 N. W. 744.

60.——Admissibility.—Parol evidence tending to show that a contract of sale was subject to a condition held inadmissible, as altering the terms of a note and chattel mortgage prima facie absolute, given by the purchaser of the goods to secure the price.—Solomon v. Stewart, Mich., 151 N. W. 716.

61.——Appeal and Error.—In an action against a railroad company for loss by fire set by a locomotive, admission of the testimony of an engineer of experience as to engines properly equipped throwing sparks held not reversible error.—Pennsylvania Fire Ins. Co. v. Ann Arbor R. Co., Mich., 151 N. W. 578.

62.——Books and Papers.—Books of physician present at birth of person in question, containing entries made in due course of business, together with testimony of the physician verifying such record, held admissible on the question of the date of the birth of such person.—Griffith v. American Coal Co., W. Va., 84 S. E. 621.

63. **Execution**—Estoppel.—That plaintiff had lost his interest in the premises through failure to redeem from a first mortgage sale held to preclude him from suing to set aside a sheriff's deed to the property.—Past v. Rennier, N. D., 151 N. W. 763.

64. **Fixtures**—Chattels.—Where chattels to become fixtures are sold with reservation of title until payment of the price, the seller does not lose any right by annexation as against a mortgagee.—In re Frederica Water, Light & Power Co., Del., 93 Atl. 376.

65.——Physical Attachment.—Where two stone crushers are purchased for use in the same plant, the physical attachment of one to the realty does not cause constructive attachment of the other, though both are necessary to operation of the plant.—Geppelt v. Middle West Stone Co., Kan., 146 Pac. 1157.

66.——Shelving.—Shelving, a gaslight system, engine, feed mill, cash carrier system, roller ladder, and track, if permanently fixed to the building with intent that they be permanently used with the building, were realty unless otherwise agreed.—L. & M. Mercantile Co. v. Wimer, Kan., 146 Pac. 1162.

67. **Fraud**—Deceit.—Innocent or honest misrepresentations will authorize a rescission of the contract of sale, but not an action for deceit.—Kilby Locomotive & Machine Works v. D. B. Lacy & Son, Ala., 67 So. 754.

68.——Injury.—One who made a misrepresentation without fraudulent design, and who offered to correct it so that no damage could arise therefrom, could not be held liable for any damages because of such misrepresentation.—Hawkins & Buford v. Edwards, Va., 84 S. E. 654.

69. **Fraudulent Conveyances**—Burden of Proof.—Where a fraudulent conveyance is charged, the burden of proof that there was a consideration of the transfer rests on the grantee.—Murphy v. Pipkin, Ala., 67 So. 675.

70.——Liens.—Withholding deed from record for about three years does not postpone the rights of the grantee to creditors of the grantor acquiring a lien subsequent to the deed.—Reed v. Brown, Mich., 151 N. W. 592.

71. **Gas**—Proximate Cause.—Negligence of a gas company in permitting gas to leak into a manhole held the proximate cause of injuries resulting from an explosion, though the particular accident could not have been anticipated. —City Gas Co. of Norfolk v. Webb., Va., 84 S. E. 645.

72. **Homestead**—Mortgage.—Recitals of a mortgage, executed by a husband alone, that the premises were not a homestead held not a covenant, but a mere statement of the husband which could not of itself validate the mortgage. —Mandan Mercantile Co. v. Sexton, N. D., 151 N. W. 780.

73. **Husband and Wife**—Action.—Neither husband nor wife can sue the other at common law while the marriage relation exists, which disability has not been removed by statute.—Greenwood v. Greenwood, Me., 93 Atl. 360.

74.——Gift.—Where a husband conveys his property direct to his wife, or causes it to be so conveyed, the law presumes that it is a gift, and no resulting trust arises.—Singleton v. Cherry, N. C., 84 S. E. 698.

75. **Injunction**—Amendment.—The court has discretion to authorize the amendment of a bill to enjoin waste at the hearing thereof so as to authorize recovery of damages for waste already committed.—Heliker v. Heliker, Mich., 151 N. W. 757.

76.——Jurisdiction.—Equity held to have jurisdiction to enjoin threatened sale of property sold conditionally, by the seller, who had seized it, and, having obtained jurisdiction for this purpose, to proceed to an acounting.—Lehnen v. Ryan, Mich., 151 N. W. 655.

77. **Insane Persons**—Vacation of Decree.— Where, in partition suit, party filed answer admitting claim of petition as to scope of conveyance by him, held, that the decree could not be vacated except upon very clear and conclusive proof his mental incapacity.—Roberts v. Bissell, Iowa, 151 N. W. 457.

78. **Insurance**—Accident.—Death of assured in a policy covering death from external, violent, and accidental means, resulting from overexertion in removing a tire from a wheel of an automobile held not accidental.—Lickleider v. Iowa State Traveling Men's Ass'n, Iowa, 151 N. W. 479.

79.——Cancellation.—Notice of the cancellation of a fire policy contained in a registered letter which was returned by the insurer's request within a less time than provided for by postal regulation, held insufficient to avoid the policy.—American Automobile Ins. Co. v. Watts, Ala., 67 So. 758.

80.——Estoppel.—Where insured's books of account, bills, invoices, etc., were destroyed in the fire which burned the insured property, his right to recover was not barred by his failure to produce for examination, as required, all books of account, etc., or certified copies thereof.—Central Nat. Fire Ins. Co. of Chicago, Ill., v. Black, U. S. C. C. A., 220 Fed, 8.

81.——Liability Insurance.—An employe held not within the terms of an employers' liability insurance policy applying only to injuries sustained on the packing house premises or ways immediately adjoining, where he was injured while working in a city park across the street.—Charles Wolff Packing Co. v. Travelers' Ins. Co., Kan., 146 Pac. 1175.

82.——Premium.—Insurer issuing a policy to employes held not entitled to defeat a recovery for non-payment of premiums where, at the time of assured's death, his employer owed him a sum in excess of premiums due.—Johnson v. Fidelity & Casualty Co. of New York, Mich., 151 N. W. 593.

83.——Suspension.—Where a member of a fraternal benefit society has voluntarily dropped her insurance certificate and been suspended under the terms thereof, she has no vested right to notice of the subsequent acts of the order affecting insurance certificates.—Edgerly v. Ladies of the Modern Macabees, Mich., 151 N. W. 692.

84. **Judgment**—Nunc Pro Tunc Entry.—The failure of the court to render judgment can never be made the basis of a nunc pro tunc entry.—McEntire v. Paffe, Ala., 67 So. 713.

85. **Landlord and Tenant**—Covenant.—Despite a covenant for the eviction of lessee for non-payment of rent, held, that equity will relieve lessee from a forfeiture occasioned by a default of a day or two in the payment of rent. —Shriro v. Paganucci, Me., 93 Atl. 358.

86.——Reletting.—A landlord may accept possession for the benefit of the tenant and relet it, in which case he has no action except for damages for difference between what he was able in good faith to rent property for and the rental fixed by lease.—Baker v. Eilers Music Co., Cal., 146 Pac. 1056.

87.——Rights of Tenant.—A tenant is entitled to undisturbed enjoyment of his possession and to determine who shall be his guests, so long as they do not infringe on the landlord's rights. —Horsely v. State, Ga., 84 S. E. 600.

88. **Libel and Slander**—Financial Worth of Defendant.—In a suit for slander, evidence of defendant's reputed financial worth is admissible to show the effect his remarks would have in the community.—McCloy v. Vaughan, Mich., 151 N. W. 667.

89. **Limitation of Action**—Discovery of Fraud. —On petition in an action for procuring money by fraudulent representations respecting worthless patent-right territory purchased by plaintiff, he could recover for the fraud, though the question of value was barred by limitations.— Penfield v. Berhenke, Kan., 146 Pac. 1187.

90. **Literary Property**—Royalties.—Under agreement between plaintiff, who wrote scenario for comic opera, and defendants, who completed the libretto, held, that defendants could not complain of division of one-half of royalties equally between them and plaintiff; the other one-half going to the composer of the music.— Maurel v. Smith, U. S. D. C., 220 Fed. 195.

91. **Master and Servant**—Assumption of Risk. —A servant engaged in mining work assumes all obvious risks incident to such work, including those of which he knows and those of which as a reasonably prudent man he should know.—Benson v. Jones & Laughlin Ore Co., Mich., 151 N. W. 707.

92.——Assumption of Risk.—Teamster experienced in hauling lumber held to have assumed risk of injury from use of unsuitable chain, where he knew and complained of its unsuitableness, but nevertheless used it on being ordered to do so.—Kelley v. Davison, Mich., 151 N. W. 671.

93.——Evidence.—Evidence held to make question for jury whether employe, shortly before electrocution by electric lamp, took the lamp to his employer's electrical department for repairs, and whether it was handed back in an

unsafe condition.—Breen v. Grand Rapids & I. Ry. Co., Mich., 151 N. W. 652.

94.——Obvious Danger.—While a master is not bound to warn a servant of obvious dangers, he should warn him of latent dangers.—Carleton v. E. & T. Fairbanks & Co., Vt., 93 Atl. 462.

95. **Mechanics' Liens**—Fixtures.—Where the base of heavy machinery has been bolted to a concrete foundation and its principal parts placed in position, the whole may be regarded as attached, so as to be covered by a mechanic's lien.—Geppelt v. Middle West Stone Co., Kan., 146 Pac. 1157.

96. **Mines and Minerals**—Contract.—A conveyance of an undivided interest in a mining claim, in the whole of which the grantor had also a leasehold interest, held not to entitle the grantee to the entire royalty reserved in a sublease.—Stroecker v. Patterson, U. S. C. C. A., 220 Fed. 21.

97.——Taxation.—A grant of minerals in land for a term of years, the lessee to pay a royalty, but not obligating him to prosecute mining operations beyond starting a well, does not transfer title to the mineral, and need not be recorded or listed for taxation in order to be valid.—Finch v. Beyer, Kan., 146 Pac. 1141.

98. **Monopolies**—Rebates.—The practice of a combination of ocean carriers to give rebates to all shippers who shipped exclusively by their lines is not an unlawful restraint of trade.—United States v. Prince Line, U. S. D. C., 220 Fed. 230.

99. **Municipal Corporations**—Special Assessments.—A charter provision, requiring that the cost of constructing sewers and street improvements be assessed on the abutting property according to the frontage rule, held not violative of Const. art. 9, § 1.—State v. City of Ely, Minn., 151 N. W. 545.

100. **New Trial**—Discretion.—In granting a new trial for inadequacy of the damages, whether defendant should be given option to allow judgment in a larger sum held within the discretion of the trial court.—Reuter v. Hickman, Lauson & Diener Co., Wis., 151 N. W. 795.

101. **Nuisance**—Evidence.—An owner of a dairy business is not liable for a nuisance created by his patrons unhitching and feeding their teams on a street in front of residences.—Mitchell v. Flynn Dairy Co., Iowa, 151 N. W. 434.

102. **Partnership**—Estoppel.—A settlement of disputed partnership accounts, made after investigation, is a contract, and precludes either partner from thereafter asserting that the other is indebted to him.—Spratt v. Dwyer, Iowa, 151 N. W. 474.

103. **Patents**—Royalty.—A contract granting exclusive right to make a furnace covered by patents in consideration of an annual royalty during the life of any patent requires payment of royalty for the life of the patent having the longest time to run.—Lauth v. McKenna Steel Working Co., Wis., 151 N. W. 797.

104. **Post Office**—Scheme to Defraud.—That letters taken from post office pursuant to scheme to defraud were decoy letters held not to render their receipt any less an offense, if they were written in an effort to detect, and not to induce the commission of, a crime.—Goldman v. United States, U. S. C. C. A., 220 Fed. 57.

105. **Principal and Agent**—Dual Agency.—Contracts of dual agency are void only when the duality was not known to each party.—Ballew v. Ware & Harper, Ga., 84 S. E. 597.

106. **Public Lands**—Surveys.—A surveyor, contracting with the government to resurvey boundaries, held not relieved from liability on the theory that he was not officially notified of the approval of his contract and bond.—American Bonding Co. of Baltimore v. Vickery, Colo., 146 Pac. 1073.

107. **Quo Warranto**—Forfeiture of Office.—That duly qualified county commissioners are guilty of official misconduct does not ipso facto work a forfeiture of the office, such as authorizes proceedings in quo warranto to oust them.—McDonough v. Bacon, Ga., 84 S. E. 588.

108. **Railroads**—Look and Listen.—Failure of a deaf traveler to stop and look from where he could have seen the train in time to have avoided the injury held contributory negligence precluding recovery.—Butts v. Atchison, T. & S. F. Ry. Co., Kan., 146 Pac. 1142.

109. **Sales**—Conditional Sales.—A conditional sale contract, giving seller on default in payment of the price the right to remove the property annexed to land, limits his right to a removal.—In re Frederica Water, Light & Power Co., Del., 93 Atl. 376.

110. **Seamen**—Medical Attention.—Where the personal negligence of a shipowner in failing to furnsh proper medical attention and care to an injured seaman is alleged and proved, the court may make an allowance to the seaman for expenses of his care and for loss of time after the expiration of his term of service.—North Alaska Salmon Co. v. Larsen, U. S. C. C. A., 220 Fed. 93.

111. **Shipping**—Rates.—Regular rates for ocean carrying trade are not unreasonable because at particular times or places tramp steamers are willing to cut them greatly in order to secure a cargo.—United States v. Prince Line, U. S. D. C., 220 Fed. 230.

112. **Street Railroads**—Warning.—It is negligence for a street car to approach workmen near the track at a prohibited speed, without sounding any warnings.—Puget Sound Traction, Light & Power Co. v. Schleif, U. S. C. C. A., 220 Fed. 48.

113. **Trespass**—Measure of Damages.—In an action against a city for trespassing on land belonging to plaintiff and not part of a street, the court properly instructed that, if the cost of restoring the premises was less than the depreciation in value thereof, such cost was the measure of plaintiff's relief.—Morgan v. City of Albert Lea, Minn., 151 N. W. 532.

114. **Trusts**—Adequate Remedy.—Where grantee in trust to sell and maintain the aged grantor neglected or refused to maintain and an action at law would not afford an adequate remedy, a court of equity, upon proper and timely application, might charge the land for maintenance, if it had not been conveyed.—Robison v. Hicks, Ore., 146 Pac. 1099.

115. **Vendor and Purchaser**—Contract to Convey.—Writing held to be an assignment of contract to convey, and not an absolute assignment of the vendor's title and interest in the land sufficient to pass title to the party designated by the purchaser.—Turney v. Combination Brick Co., Mich., 151 N. W. 590.

116. **Waters and Water Courses**—Joint Tort-feasors.—In action for overflow though some evidence thereon is essential, exact measurements of the respective quantities of water from different sources is not essential to authorize recovery against one of several independent tort-feasors for his proportionate share of the injury.—Woodland v. Portneuf Marsh Valley Irr. Co., Idaho, 146 Pac. 1106.

117. **Wills**—Cancellation.—A bequest may be cancelled by testator by drawing lines through the paragraphs of the will wherein such bequest is made.—In re Wood's Estate, Pa., 93 Atl. 483.

118.——Practice.—An heir suing to set aside a will for mental incapacity and undue influence does not prevail, where the will is sustained, though one bequest fails, creating a residuary estate, which descends to the heirs at law.—In re Kennett's Estate, Kan., 146 Pac. 1153.

119. **Witnesses**—Competency.—That a witness testified he had no recollection of a conversation with plaintiff as to statements of defendant, but, if he had such conversation, what he said was true, held not to render competent plaintiff's testimony as to what the forgotten statement was.—Mallinger v. Sarbach, Kan., 146 Pac. 1143.

120.——Refreshing Memory.—Attorney in testifying concerning services held properly permitted to aid his memory by his book of original entries and a slip prepared therefrom, though the entries were not made by him.—Phoenix Fire Extinguisher Co. v. T. M. Sinclair & Co., Iowa, 151 N. W. 462.

121. **Attorney and Client**—Services.—An attorney may make an enforceable contract with one about to become his client, for payment of compensation for services to be rendered.—Kent v. Fishblate, Pa., 93 Atl. 509.